(1) CF 2004

(6)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C.NO. 43 /2004

Single Bench

IN THE MATTER OF

M/s Tribal Co-operative Marketing Development
Federation of India Limited (TRIFED)
NCUI Building Second Floor
3 Shri Institutional Area,
August Kranti Marg,
New Delhi – 110016

Through : Its Regional Manager,
TRIFED, Regional Office
Jagdalpur (Chhattisgarh)

P.R. No. 436/04
Presented by Shri Sunil Bhagwani
dated 11.8.04

APPLICANT

VERSUS

M/s Hanuman Vitamins Foods Limited,
Akola Road, Khamgaon 444303
Distt. Buldana (Maharashtra)

RESPONDENT

AN APPLICATION ON BEHALF OF THE APPLICATION UNDER SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT , 1996 READ WITH SCHEME FOR APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF CHHATTISGARH HIGH COURT , 2002.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... M.C.C.No. 43/2004 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	15.07.2005 Heard Mr. P.C. Pant, Advocate & Mr. Sunil Ottwani, learned counsel for the petitioner and Mr. A. Shrivastava, learned counsel for the respondent. An agreement was entered into between the petitioner and the respondent whereunder the respondent was to lift the stocks of Sal seeds from the godowns of the petitioner after paying all costs, charges and expenses to the petitioner. The petitioner has alleged that although several letters were issued to the respondent for lifting the Sal seeds before 30.09.2001 as stipulated in the agreement, the respondent did not pay any attention to the said letters and did not pay the amount as fixed in the agreement except depositing of security amount and furnishing of bank guarantee. In the circumstances, the petitioner decided to forfeit the bank guarantee for amount of Rs.75,00,000/- and also security amount of Rs.17,00,000/-. The petitioner then terminated the agreement by its letter dated 19.01.2002 without prejudice to its right to invoke the arbitration clause / other civil remedies to recover the losses and damages on account of non-lifting of the stocks of Sal seeds by the respondent. Clause 23 of the agreement provided that all disputes and / or difference whatsoever arising between the parties out of the agreement relating to its construction, meaning, scope, operation or effect of the agreement or the validity or breach of thereof shall be settled by an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"). Accordingly, the petitioner decided to proceed for arbitration and requested Shri Badri Bishal Agrawal to work as an Arbitrator. Shri Badri Bishal Agrawal gave his consent to discharge his duties as an Arbitrator.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... M.C.C.43/2004 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

A notice dated 10.02.2003 was issued to the respondent asking him to give its consent to the name of Shri Badri Vishal Agrawal as an Arbitrator. But the respondent sent a letter dated 27.09.2003 to the counsel of the petitioner stating therein that the respondent has been registered with the BIFR in case No.256 of 2003. The petitioner has therefore, filed this application under Section 11 of the Act with the prayer to appoint an Arbitrator to decide the disputes and differences between the parties.

In **AGIO Countertrade PTE Ltd. vs. Punjab Iron & Steel Co. Ltd.**, reported in **(1999) 5 SCC 734**, the Supreme Court has held that the proceedings for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 have a very narrow scope and are not covered by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Considering the aforesaid decision, there appears to be no bar for the Chief Justice to appoint the Arbitrator under Section 11 of the Act to decide the disputes and differences between the parties in this case.

Accordingly, I appoint Dr. Jose P. Verghese, Advocate, New Delhi, as an Arbitrator to decide the disputes between the parties subject to his consent. The respondent may resist the claim of the petitioner or file any other application as available to him under the law before the aforesaid Arbitrator.

The application stands disposed of.

Sd/-
CHIEF JUSTICE

Brajesh

SP/FS/2005-20,000